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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,499

07/14/2004

Stephen Norman Batchelor

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

KHAN, AMINA S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,499

Applicant(s)

BATCHELOR ET AL.

Examiner

Amina Khan

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/20/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 20, 2007 has been entered.

2. Claims 1 and 4-11 are pending. Claims 2 and 3 have been cancelled. Claims 1 and 4 have been amended.

3. The rejection of claims 1, 4 and 7 under 35 U.S.C. 103(a) as being unpatentable over Allen (US 5,510,004) is withdrawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1796

5. Claims 1 and 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasuna et al. (US 6,297,319).

Nagasuna et al. teach water absorbing polymer comprising polyethylene glycol mono(meth)acrylate (column 5, lines 35-40), 2-aminomethacrylate (column 9, lines 40-45; column 11, lines 9-12), polyethyleneimine azetidinium salt (column 13, lines 40-45), polyethylene glycol diglycidyl ether (column 7, lines 24-25), surfactants (column 7, lines 50-65), deodorants, disinfectants, antimicrobial agents (column 15, lines 40-50) and water (column 12, lines 20-30). The composition is coated on diapers for the benefit of water absorbency.

Nagasuna et al. do not teach all the instantly claimed embodiments in a single example.

It would have been obvious to the skilled artisan to produce the claimed composition, as Nagasuna et al. teach the absorbency benefits provided by each of the claimed ingredients for the production of a water absorbent textile. Regarding the concentration limitations of claim 4, the claim is a composition claim of which the polymer component limitations are met by the teachings of Nagasuna et al. Because the composition comprises of Nagasuna comprises similar components as the instant composition, application of this composition to fabrics would be expected to provide the instantly claimed concentration to treated fabrics. One of ordinary skill in the art would have been motivated to select these components for optimization of absorbency benefits absent unexpected results.

Art Unit: 1796

Even though Nagasuna does not teach a fabric treatment use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasuna et al. (US 6,297,319) as applied to the claims above and further in view of Evans (US 5,534,038).

Nagasuna et al. are relied upon as set forth above.

Nagasuna et al. do not teach polymers comprising 1,1,3,3,5,5-hexafluoroisopropyl methacrylate.

Evans teaches adding 1,1,1,3,3,3- hexafluoroisopropyl methacrylate monomers (column 6, lines 35-36) to polymers for the benefit of producing added absorption of water in such products as disposable diapers (column 11, lines 20-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the polymers of Nagasuna et al. by incorporating the hexafluoroisopropyl methacrylate monomers as taught by Evans because Evans teaches the added water absorbency imparted to disposable diapers when these monomers are included in the polymer. It is prima facie obvious to combine the two references, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known

Art Unit: 1796

properties, the combination is obvious absent unexpected results. A person of ordinary skill in the absorbent article art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

Response to Arguments

7. Applicant's arguments filed regarding Nagasuna et al. and Evans et al. have been fully considered but they are not persuasive.

8. The applicant argues:

"Nagasuna teaches a water-absorbing agent made by treating a water-absorbent resin with an oxazoline compound of specified structure. The agent is a water absorbing agent for paper-made diapers (disposable diapers col. 1, line 9). Nagasuna is silent about the treatment of fabrics, especially clothes as is required by the presently amended claims."

"Nagasuna does not disclose the polymer in combination with the claimed specified detergent active surfactants or the claimed fabric softening or conditioning compound. The only disclosure of 'surfactant' is at col. 12, lines 59 onwards, where Nagasuna states that "surfactants or inert fine inorganic powders may be used as third substances other than the crosslinking agent". Applicants respectfully submit that this disclosure means that the surfactant is taught to be used instead of the crosslinking agent and not in combination therewith. Therefore, it is respectfully submitted that Nagasuna teaches away from the claimed combination of specific surfactants and a crosslinking agent."

Art Unit: 1796

"Evans is concerned with the unrelated and nonanalogous field of contact lens tinting. Evans does not make a single mention of disposable diapers in col. 11, lines 24, which applicants respectfully submit is not the essential teaching of Evans."

"In the alternative that the skilled person would consider such an unlikely document, from the disclosure of Nagasuna, the skilled person would conclude that disposable diapers are a paper-based as opposed to a fabric material. Furthermore, Evans does not teach any composition for fabric treatment including a surfactant as required by claim 1."

The examiner respectfully disagrees. With regards to the intended use of the composition as a fabric treatment, the examiner argues even though Nagasuna does not teach a fabric treatment use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. The intended use was given little patentable weight.

Regarding the disclosure of surfactants as components of the compositions, Nagasuna et al. clearly teach surfactants as components present in the polymerization process and do not require a substitution for the cross-linking agent (column 7, lines 50-65).

Regarding Evans, the reference clearly teaches that the hydrophilic polymers are useful for the absorption of water in products such as disposable diapers (column 11,

lines 22-25). Nagasuna et al. are also directed towards compounds applied to diapers to improve water absorption (column 15, lines 19-55). All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ 328 (CCPA 9173).

It is prima facie obvious to combine the two compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the diaper art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AM

AK

October 28, 2007

Lorna M. Douyon

LORNA M. DOUYON
PRIMARY EXAMINER